

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASTE ACTION PROJECT,

Plaintiff,

v.

WILLIS ENTERPRISES, INC.,

Defendant.

Case No. 3:20-CV-05912-TL

~~[PROPOSED]~~ CONSENT DECREE

I. STIPULATIONS

WHEREAS, Plaintiff Waste Action Project filed a complaint against Defendant Willis Enterprises, Inc. (“Willis”) alleging violations of the Clean Water Act (“CWA”), 33 U.S.C. § 1251 et seq., relating to discharges of stormwater associated with industrial activities and other pollutants from Willis’s facility, located at 208 Park Street, Oakville, WA 98586 (the “Facility”) and seeking declaratory and injunctive relief, civil penalties, and attorneys’ fees and costs.

WHEREAS, Waste Action Project and Willis agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

WHEREAS, Waste Action Project and Willis stipulate to the entry of this Consent Decree without trial or adjudication of any issues of fact or law regarding Plaintiffs’ claims that remain undecided or unstipulated, and without any admissions other than those expressly provided in this Consent Decree.

CONSENT DECREE
No. 3:20-cv-05912-TL

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN ST.
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 DATED this ___th day of February, 2022

2 CASCADIA LAW GROUP

SMITH & LOWNEY PLLC

3
4 By s/Tisha Pagalilauan
Tisha Pagalilauan, WSBA #28217
5 Attorney for Defendant

By s/Marc Zemel
6 Marc Zemel, WSBA #44325
7 Attorney for Plaintiff
8 Waste Action Project

9 WILLIS ENTERPRISES, INC.

WASTE ACTION PROJECT

10 By Todd Charlton
Todd Charlton
11 Vice President, Operations

By Greg Wingard
Greg Wingard
12 Executive Director

13 I. ORDER AND DECREE

14 This matter came before the Court upon the foregoing stipulations of the parties. Having
15 considered the stipulations, the United States' notice of non-objection (Dkt. No. 22), the Rose
16 Foundation's letter (Dkt. No. 20-1), and the promises set forth below, the Court hereby ORDERS,
17 ADJUDGES, and DECREES as follows:

- 18 1. This Court has jurisdiction over the parties and subject matter of this action.
- 19 2. Each signatory for the parties certifies for that party that he or she is fully
20 authorized by the party or parties he or she represents to enter into the terms and conditions of
21 this Consent Decree and to legally bind the party or parties, their successors in interest and
22 assigns of the parties to it.
- 23 3. This Consent Decree applies to and binds the parties and their successors in
24 interest and assigns.
- 25
26

1 4. This Consent Decree and any injunctive relief ordered within will apply to the
2 operation, oversight, or both by Willis of the Facility, which is currently subject to National
3 Pollutant Discharge Elimination System Permit No. WAR000871 (the “NPDES permit”).

4 5. This Consent Decree is a full and complete settlement and release of all the claims
5 alleged in the complaint for the alleged acts or omissions, existing as of the date of entry of this
6 Consent Decree, that the complaint asserted under the Clean Water Act, 33 U.S.C. §§ 1251-
7 1387, arising from operations of the Facility against Willis, its employees, agents, successors and
8 assigns. Upon termination of this Consent Decree, these claims will be released and dismissed
9 with prejudice.

10 6. The parties agree that the obligations undertaken under Paragraphs 7, 8 and 9 are
11 in full and complete satisfaction of all the claims covered by this decree.

12 7. Injunctive Relief:

13 a. As used in this Consent Decree, the following terms have the following
14 meanings:

- 15 1. “Northern Log Storage Area” refers to an area of the Facility used for log
16 storage, located northwest of the rest of the Facility, and north of railroad
17 tracks.
18 2. “Level 3 Corrective Action” refers to the actions required under NPDES
19 Permit Condition S8.D described with the same term.
20 3. “BMPs” refers to stormwater best management practices.
21 4. “SWPPP” refers to a Stormwater Pollution Prevention Plan under the
22 NPDES Permit.

23 b. Willis will comply fully with the terms and provisions of the NPDES
24 Permit at the Facility and any successor, modified, or replacement permit.

25 c. **Within five (5) days** of entry of this Consent Decree, Willis will review
26 Department of Ecology-approved discharge sample collection methodology, and train any

1 Facility staff responsible for collecting samples who have not been trained in the last year in
2 proper sample collection methodology. Willis will ensure the use of proper methodology when
3 collecting discharge samples under the NPDES Permit.

4 d. Willis will regularly monitor the condition and effectiveness of its new
5 infiltration trench and related stormwater piping. Willis will maintain and repair the infiltration
6 trench and piping to ensure efficient operation and reduce the frequency of stormwater
7 discharges.

8 e. Willis will maintain a sampling location under the NPDES Permit for the
9 Northern Log Storage Area, in addition to at least one other sampling location.

10 f. **For three (3) years** after entry of this Consent Decree, Willis will collect
11 stormwater samples from each of its sampling locations at least once per month between October
12 1 and July 1 of each year, if a discharge occurs within regular business hours. Willis will follow
13 the sample and laboratory documentation conditions of NPDES Permit Condition S4.B.4-6 and
14 have the samples analyzed by an accredited laboratory for all NPDES Permit parameters
15 applicable to the Facility (i.e. turbidity, pH, copper, zinc, total suspended solids (TSS), chemical
16 oxygen demand (COD)). Observations for oil sheen need not be done by an accredited
17 laboratory but must also be monitored.

18 g. If Willis exceeds an applicable benchmark in the NPDES Permit for any
19 two quarters during a calendar year in the three (3) years following entry of this Consent Decree,
20 Willis will complete a Level 3 Corrective Action as provided and under the deadlines in NPDES
21 Permit Condition S8.D, to include additional treatment BMPs with the goal of achieving the
22 applicable benchmark value(s) in future discharges. Before installing treatment BMPs that
23 require site-specific design or sizing of structures, equipment, or processes to collect, convey,
24 treat, reclaim, or dispose of industrial stormwater, Willis will submit an engineering report to the
25 Department of Ecology for review, with contemporaneous copy to Plaintiff. The engineering
26 report must include the components described in NPDES Permit Condition S8.D.3.a. A

1 qualified industrial stormwater professional must promptly review a revised Facility SWPPP that
2 incorporates the additional treatment BMPs, sign the SWPPP certification form, and certify that
3 it is reasonably expected to meet the NPDES Permit benchmarks upon implementation. Willis
4 will promptly notify WAP when this condition is triggered.

5 h. Within two (2) weeks of entry of this Consent Decree and with the
6 assistance of a qualified stormwater consultant, Willis will implement new BMPs to eliminate
7 sediment track-out from the Facility, including but not limited to weekly sweeping with high-
8 performance equipment and more frequently as conditions warrant.

9 i. On a monthly basis, Willis will forward all of its communications or
10 submissions with the Department of Ecology related to the Facility to Waste Action Project.

11 8. Payment in Lieu of Penalty:

12 a. **Within fourteen (14) days** of entry of this Consent Decree by the Court, Willis
13 will make a payment in the amount of EIGHTY-FIVE THOUSAND DOLLARS (\$85,000) to the Rose
14 Foundation for Communities and the Environment for projects to improve the water quality in
15 the Chehalis River watershed, including Grays Harbor, as described in Exhibit 1 to this Consent
16 Decree. Unless the parties mutually agree to wire payments, the check to the Rose Foundation
17 for Communities and the Environment, Attention: Tim Little, 201 4th Street, Suite 102, Oakland,
18 CA 94607. Payments will include the following reference in a cover letter or on the check:
19 “Consent Decree, Waste Action Project v. Willis Enterprises, Inc., W.D. Wash. No. 3:20-cv-
20 05912-TL.” A copy of the checks and cover letters, if any, will be sent simultaneously to WAP
21 and its counsel.

22 9. Costs of Litigation:

23 a. **Within fourteen (14) days** of entry of this Consent Decree by the Court, Willis
24 will pay FIFTY-THREE THOUSAND, SEVEN HUNDRED AND FIFTY DOLLARS (\$53,750) to cover
25 WAP’s litigation fees, expenses and costs (including reasonable attorney and expert witness
26 fees) by check payable and mailed to Smith & Lowney, PLLC, 2317 East John St., Seattle, WA

1 98112, Attn: Marc Zemel. Willis's payment will be in full and complete satisfaction of any
2 claims WAP has or may have, either legal or equitable, and of any kind or nature whatsoever, for
3 fees, expenses, and costs incurred in this litigation.

4 10. The payments described under Paragraphs 8 and 9 above shall be in full and
5 complete satisfaction of any claims Waste Action Project has or may have against Willis, either
6 legal or equitable, and of any kind or nature whatsoever, for fees, expenses, and cost incurred in
7 this litigation, or for civil penalties, or payments in lieu of civil penalties pursuant to a
8 supplemental environmental project under the CWA.

9 11. A force majeure event is any event outside the reasonable control of Willis that
10 causes a delay in performing tasks required by this decree that cannot be cured by due diligence.
11 Delay in performance of a task required by this decree caused by a force majeure event is not a
12 failure to comply with the terms of this decree, provided that Willis timely notifies Plaintiff of
13 the event; the steps that Willis will take to perform the task; the projected time that will be
14 needed to complete the task; and the measures that have been taken or will be taken to prevent or
15 minimize any impacts to stormwater quality resulting from delay in completing the task.

16 Willis will notify Plaintiffs of the occurrence of a force majeure event as soon as
17 reasonably possible but, in any case, **no later than fifteen (15) days** after the occurrence of the
18 event. In such event, the time for performance of the task will be extended for a reasonable
19 period of time following the force majeure event.

20 By way of example and not limitation, force majeure events include

- 21 a. Acts of God, war, insurrection, or civil disturbance;
- 22 b. Earthquakes, landslides, fire, floods;
- 23 c. Actions or inactions of third parties over which defendants have no
24 control;
- 25 d. Unusually adverse weather conditions;
- 26 e. Restraint by court order or order of public authority;

f. Strikes;

g. Any permit or other approval sought by Willis from a government authority to implement any of the actions required by this consent decree where such approval is not granted or is delayed, and where Willis has timely and in good faith sought the permit or approval; and

h. Litigation, arbitration, or mediation that causes delay.

12. This Court retains jurisdiction over this matter. And, while this Consent Decree remains in force, this case may be reopened without filing fee so that the parties may apply to the Court for any further order that may be necessary to enforce compliance with this decree or to resolve any dispute regarding the terms or conditions of this Consent Decree. In the event of a dispute regarding implementation of, or compliance with, this Consent Decree, the parties must first attempt to resolve the dispute by meeting to discuss the dispute and any suggested measures for resolving the dispute. The provisions of CWA section 505(d), 33 U.S.C. § 1365(d), regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, will apply to any proceedings seeking to enforce the terms and conditions of this Consent Decree.

13. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney General and the Administrator of the U.S. EPA. Therefore, upon the filing of this Consent Decree by the parties, Plaintiff will serve copies of it upon the Administration of the U.S. EPA and the Attorney General.

14. This Consent Decree will take effect upon entry by this Court. It terminates **three (3) years after entry, or upon completion of all obligations imposed by the Consent Decree**, whichever is later.

15. All parties have participated in drafting this Consent Decree.

1 16. This Consent Decree may be modified only upon the approval of the Court.

2 17. If for any reason the Court should decline to approve this Consent Decree in the
3 form presented, this Consent Decree is voidable at the discretion of either party. The parties
4 agree to continue negotiations in good faith in an attempt to cure any objection raised by the
5 Court to entry of this Consent Decree.

6 18. All communications between the parties shall be through legal counsel.
7 Notifications or copies required by this Consent Decree to be made to Plaintiff shall be delivered
8 electronically to:

9 Waste Action Project
10 Attn: Greg Wingard
11 P.O. Box 9281,
12 Covington, WA 98042
13 E-mail: gwingard@earthlink.net

14 Notifications required by this Consent Decree to be made to Willis shall be mailed to:

15 Todd Charlton
16 Willis Enterprises, Inc
17 PO Box 457
18 Oakville, WA 98568

19 And to:

20 Tisha Pagalilauan
21 Cascadia Law Group PLLC
22 1201 3rd Avenue, Suite 320
23 Seattle, WA 98101
24 tpagalilauan@cascadialaw.com

25 A notice or other communication regarding this Consent Decree will be effective when
26 received unless the notice or other communication is received after 5:00 p.m. on a business day,
or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the
next business day. A notice or other communication will be deemed to have been received: (a) if

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1 it is delivered in person or sent by registered or certified mail or by nationally recognized
2 overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the
3 receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a
4 change in address for which no notice was given, then upon that rejection, refusal, or inability to
5 deliver.
6

7 Dated this 2nd day of May 2022.
8

9 
10

11 Tana Lin
United States District Judge

12 Presented by:

13 CASCADIA LAW GROUP

SMITH & LOWNEY PLLC

14 By s/Tisha Pagalilauan
15 Tisha Pagalilauan, WSBA #28217
Attorney for Defendant

By s/Marc Zemel
Marc Zemel, WSBA #44325
Attorneys for Plaintiff